

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of a new rule (ARM 8.94.3811))
for the submission and review)
of applications to the)
Treasure State Endowment)
Program (TSEP))

To: All Concerned Persons

1. On August 25, 2005, the Department of Commerce published MAR Notice No. 8-94-48 regarding the public hearing on the proposed adoption of a rule concerning the submission and review of applications to the Treasure State Endowment Program at page 1539 of the 2005 Montana Administrative Register, Issue No. 16.

2. The Department has adopted the new rule (8.94.3811) exactly as proposed, but has amended the Montana Treasure State Endowment Program Application Guidelines dated 2005 that are incorporated by reference in new rule I based on comments received.

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

Comment No. 1: Two comments were received requesting that counties be allowed to submit applications for construction projects on behalf of rural improvement districts, with the requirement that the county water and sewer district be created before a grant could be awarded, or when the grant is awarded prior to the district creation, that the grant could only be used for the project once the district has been created. The reason for this request is because of the extensive amount of time it takes to form a district and complete a preliminary engineering study, and the need to adequately inform residents about the need for the project and the need to create a district. The county would administer the grant through an interlocal agreement with the newly formed county water and sewer district. Currently, a county water and sewer district must be created before applying for a construction grant.

Response: The Department agrees and will allow counties to submit applications for construction projects on behalf of rural improvement districts, with the condition that the funds could only be released for the project once a county water and sewer district has been created. The county, which was awarded the grant, would administer the grant through an interlocal agreement with the newly formed district.

Comment No. 2: The Department should add language and scoring criteria to the guidelines encouraging bridge projects that have the potential to promote healthy activities and lifestyles by providing safe facilities for the public to walk or ride bicycles.

Response: The current language in the guidelines that the commenter took exception to states "Pedestrian bridges while eligible, are not likely to score high enough to be funded unless the applicant can document that serious health or safety issues are going to be resolved." The Department is simply attempting to inform applicants about the likelihood of this type of project being funded unless the applicant can document that the project will solve a serious health or safety problem. The Department thinks that the evaluation criteria are adequate, as is, for determining whether there are urgent and serious public health and safety problems that would be resolved by the project (Statutory Priority #1). In addition, the specific scoring definitions used to score Statutory Priority #1 are not contained within the guidelines, but the Department thinks that the definitions used already take into account the language that was proposed. As a result, the Department does not believe that any changes to the guidelines are necessary.

Comment No. 3: The Department should add language clarifying the timeframe when the number of "undeveloped, vacant lots" is determined. This is potentially a factor when more than \$15,000 per benefited household or a hardship grant is requested. The commenter suggested that it be at the end of the construction project.

Response: The Department agrees that the timeframe should be clarified. The number of undeveloped, vacant lots will be based on what has been developed at the time the application is submitted unless the applicant can adequately demonstrate that development was prohibited by a county or state agency. The Department may allow some currently vacant lots to be counted as a benefited household if the applicant can document that they will be developed upon completion of the construction project.

Comment No. 4: The Department should take into account solid waste charges paid by residential users as part of the combined target rate analysis; combine solid waste charges with the water and wastewater charges currently looked at in the combined target rate analysis. The reason is to allow for a more complete look at utility charges in order to determine if there is an undue hardship.

Response: The proposal would result in major changes to the methodology used to determine financial analysis and the Department does not believe that it would have adequate time to implement such a change prior to applications being received in

2006. In addition, the Department believes that the public should be provided an opportunity to evaluate and comment on this proposal. The Department will continue to evaluate this proposal, and if it is found to have reasonable support, will propose it as part of the changes that will be made two years from now.

Comment No. 5: A comment was received in regards to a requirement that proposed projects must be comprised of "stand-alone" activities. Concern was expressed that this would be narrowly defined and would preclude some projects from being built that require a phased approach.

Response: The intent of the requirement is not to preclude phased projects, but rather to ensure that substantive improvements and public health and safety benefits result from the project that do not require additional funds to complete. It would not require the complete elimination of a particular type of problem, such as inflow and infiltration throughout the entire sewer collection system, which may only be completely eliminated after two or more phases. The intent of this requirement is to preclude preliminary-type work from being funded that would only result in a substantive improvement once additional funds were obtained and the project can be completed. As a result, the Department will include this additional language to help clarify the requirement.

Comment No. 6: A comment was received that the following note should be further explained: "If the exact same project and PER was scored through the CDBG ranking process within the two years prior to the application submittal deadline, TSEP will accept the score for health and safety awarded to the applicant." It was not clear whether this applied to a project with multiple phases, and the CDBG funded phase was different from the phase proposed to be funded by TSEP.

Response: The Department agrees that clarification is needed and will add the following: "a re-evaluation of the PER would be required if the proposed TSEP project is a different phase from the one proposed for CDBG funding. If any component of the proposed project has changed from what was proposed to CDBG, the Department reserves the right to re-evaluate the PER and/or assign a score different from the one assigned by CDBG." The reason for requiring a re-evaluation is because frequently the engineering review process focuses on the one phase proposed for funding and the other phases discussed in the application do not receive the same depth of review.

Comment No. 7: A comment was received that the match requirement for TSEP funds be changed from 50% to 25% to allow more flexibility to get projects off the ground and to allow communities that cannot use the CDBG program to have a greater grant share. An alternative was also suggested; a graduated scale based on target rate. For example, 45% cost share at

125% of target; 40% cost share at 150% of target and 35% cost share at 175% of target.

Response: The statute enabling the TSEP program refers to "matching grants", which generally is construed as a dollar-for-dollar, or equal amount. The Department believes that the original legislative intent was that local governments match each TSEP grant dollar with one local dollar, unless undue hardship could be adequately demonstrated. The application guidelines already contain a provision that allows the match to be as low as 25% if certain conditions are met; one of which is that the user rates would be 150% of target. As a result, the Department does not believe that any changes to the guidelines are necessary.

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY J. PREITE
ANTHONY J. PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State October 17, 2005